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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re O.M., a Person Coming Under the
Juvenile Court Law.

B210849
(Los Angeles County
Super. Ct. No. CK73673)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

Y.A.,

Objector and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Terry T. Truong, Referee (pursuant to Cal. Const., art. I, § 21). Affirmed.

Daniel G. Rooney, under appointment by the Court of Appeal, for Objector and Appellant.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County Counsel, Aileen Wong, Deputy County Counsel for Plaintiff and Respondent.

INTRODUCTION

Y.A. (mother) is mother to eight children, ages 13, 10, 9, 6, 4, 3, 2, and 8 months. The dependency proceedings at issue concern only mother's 8-month-old son O.M.; mother previously lost custody of her seven oldest children in Arizona. Mother appeals from the juvenile court's disposition order with respect to O.M., contending that the juvenile court's jurisdictional findings are not supported by substantial evidence. We affirm.

BACKGROUND

On July 2, 2008, the Los Angeles County Department of Children and Family Services (Department) received an immediate response referral from Holy Cross Medical Center concerning newborn O.M. The referral alleged that mother had "several children" who were removed from mother's custody in Arizona and with whom mother had failed to reunify.

That night, a social worker met with mother and non-offending father H.M. (father) at Holy Cross. Mother seemed "reticent" about her Child Protective Services history in Arizona. Mother informed the social worker that in April 2007, she "graduated" from a three-month inpatient drug abuse treatment program called "The Haven" in Arizona. Mother had been having "hard times" with cocaine. Medical history records reflected that the hospital had contacted mother's former social worker in Arizona who "indicated" that O.M. would have been detained if he had been born in Arizona due to mother's extensive history with Child Protective Services and her failure to reunify with her seven other children.

The social worker in this case reported that mother and father were "very cooperative" and seemed "highly motivated." Father reported stable employment and had brought a baby car seat to the hospital in anticipation of O.M.'s discharge. Mother's and father's apartment was inspected that night and was found to be "clean and fairly tidy." A new crib was set up for O.M. that had bumper pads that were properly installed. Mother had diapers, bottles, new clothes, and blankets appropriate for a newborn.

A hospital hold was not placed on O.M. because he and mother had negative toxicology results. The social worker authorized mother and father to take O.M. home. Mother and father were required, however, to return the next day for an Emergency Team Decision Meeting.

As a result of the Emergency Team Decision Meeting, father agreed to submit to an on-demand drug and alcohol test, and mother agreed to submit to ongoing drug and alcohol testing and to attend Narcotics Anonymous meetings. Mother and father agreed to participate in family preservation services and individual counseling. Mother and father were sent for drug testing and both tested negative. The Department was to file a non-detained petition under Welfare and Institutions Code section 300.¹

On July 10, 2008, the social worker spoke with Kathy McMasters, the Arizona Child Protective Services social worker for three of mother's children. McMasters stated that mother "has a lot of fallout left in Arizona with her 7 other birth children." Many of mother's children were "drug exposed," one might require extensive residential care, and some believe that mother is dead. McMasters reported that mother and D.A., apparently father to three of mother's children, participated in domestic violence. McMasters informed the social worker that it is mother's pattern to tell the child protective agency anything it wants to hear, but then does not follow through. On July 17, 2008, the Department filed a non-detained section 300 petition.

The Department's August 25, 2008, Jurisdiction/Disposition Report states that mother "indicated" the truth of the allegation that she had created a detrimental and endangering home environment for O.M.'s siblings through a failure to reunite with them, a history of cocaine and alcohol abuse, and a history of domestic violence. Mother explained that there were various reasons for her inability to reunify with her children. Mother had been "extremely depressed" by her mother's death in 2000. Mother had been

¹ All statutory citations are to the Welfare and Institutions Code unless otherwise noted.

using drugs “on and off” since 2003. Mother stated that she last used cocaine during a visit to Tucson in October, 2007. Mother had been in an “extremely abusive” relationship with ex-husband, D.A. Mother made the decision that her children would be better off with others because she was unable to care for them properly at the time.

Mother was saddened by the loss of her other children and her inability to reunify with them and indicated a desire to “rekindle” her relationship with at least some of her children in Arizona. Mother stated that she had made a clean start in California, and her life is very different now. Mother’s relationship with father is “extremely supportive,” and she believes with his help, continued attendance at Narcotics Anonymous meetings, therapy, and the support of her sponsors, she will be able to remain “clean” and care for O.M.

In recommending that O.M. be made a dependent of the juvenile court, the Department’s Jurisdiction/Disposition Report states, “This DI believes that mother is trying hard to change her life and that she hopes this new child will provide her with a fresh start. [The Department] applauds mother’s change of heart and her recent efforts to provide a safe and stable home for her new child. However, it is impossible to overlook the fact that mother has failed to reunite with seven other children and the [*sic*] she has had serious problems in the past with drug use and depression. [The Department] believes it would be in the best interest of the child for mother and father to be offered family maintenance services and that [the Department] continue to monitor this case for the foreseeable future.”

At the September 17, 2008, adjudication hearing, Jeff Steinhart, the dependency investigator, testified that the Department determined that O.M. was safe in mother’s home. Steinhart stated that he did not see any factors that posed a risk to O.M. Steinhart was unaware of the existence of any factors at that time that endangered O.M.’s physical or emotional health, safety, or well-being. Steinhart nevertheless believed that there is some risk in O.M. remaining in mother’s care because mother might “relapse due to drug use,” and mother failed to reunify with her seven other children.

When asked why the Department had extended family maintenance services, Steinhart responded that mother was married to somebody whom the Department felt is “very competent and capable of caring” for O.M. and who had indicated that he was willing to help mother get through her “issues.” Thus, the Department concluded, O.M. was safe in mother’s home. Steinhart believed, however, that the juvenile court should maintain jurisdiction over the case because mother has had “serious problems” and had not reunified with her seven other children. Steinhart stated that if mother’s seven other children had been “lost” in Los Angeles County, the Department would have detained O.M. and asked for no reunification services.

The juvenile court sustained the allegation in the petition under section 300, subdivision (j) that was amended to allege, “The child [O.M.’s] . . . mother [Y.A.] failed to reunify with seven of [O.M.]’s siblings in Arizona due to a history of cocaine and alcohol abuse and domestic violence. Such failure to reunify with the seven siblings of [O.M.] by the child’s mother places the child at risk of physical and emotional harm.” The juvenile court declared O.M. a dependent of the court under section 300, subdivision (j). The juvenile court placed O.M. in mother’s and father’s home and ordered the Department to provide family maintenance services.

DISCUSSION

Mother contends that substantial evidence does not support the juvenile court’s finding of jurisdiction. Mother argues that the juvenile court only had “information from Arizona” that mother had lost custody of her other children through drug abuse, domestic violence, and the failure to reunify; that there had not been any petitions sustained under California law as to those children; and that the evidence showed that O.M. was not at risk.

I. Standard of Review

“At a jurisdictional hearing, a finding that the minor is a person described in section 300 must be supported by a preponderance of the evidence. (§ 355; *Cynthia D. v.*

Superior Court (1993) 5 Cal.4th 242, 248 [19 Cal.Rptr.2d 698, 851 P.2d 1307].)” (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.) We review the juvenile court’s jurisdictional findings for substantial evidence. (*Ibid.*)

II. Substantial Evidence Supports the Juvenile Court’s Jurisdictional Findings

Subdivision (j) of section 300 provides that a child may be adjudged to be a dependent child of the juvenile court if “The child’s sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions. The court shall consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the child.”

The sustained petition alleged that mother failed to reunify with O.M.’s seven siblings in Arizona because of a history of cocaine and alcohol abuse and domestic violence. Mother contends that the transgressions with respect to O.M.’s siblings occurred in Arizona, that no section 300 petition was sustained, and that no child was declared to be a dependent under section 300 with respect to any such transgressions. Thus, mother concludes, such alleged contentions cannot serve as the basis for a jurisdictional finding under section 300, subdivision (j). Moreover, mother contends, the evidence shows that O.M. is not at risk. Mother’s contentions are unavailing.

Subdivision (j) of section 300 does not require that allegations with respect to a child’s sibling be based on conduct that occurred in California and served as the basis for a sustained petition. Instead, the only requirement is that the parent’s conduct falls within the provisions of subdivisions (a), (b), (d), (e), or (i). Subdivision (b) provides, “The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child’s parent or guardian to adequately supervise or protect the child from the conduct of the

custodian with whom the child has been left, or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse." "[D]omestic violence in the same household where children are living *is* neglect; it is a failure to protect [the children] from the substantial risk of encountering the violence and suffering serious physical harm or illness from it. Such neglect *causes* the risk." (*In re Heather A.*, *supra*, 52 Cal.App.4th at p. 194.)

Sufficient evidence was adduced at the adjudication hearing to support the juvenile court's jurisdictional findings. The Department's August 25, 2008, Jurisdiction/Disposition Report states that mother "indicated" the truth of the allegation that she had created a detrimental and endangering home environment for O.M.'s siblings through a failure to reunite with them, a history of cocaine and alcohol abuse, and a history of domestic violence. Mother admitted that her relationship with her former husband, D.A., had been "extremely abusive" and that she had been unable to care for her children properly.

Although Steinhart testified at the adjudication hearing that he was unaware of any factor in mother's and father's home that posed an immediate risk to O.M.'s physical or emotional safety, he still believed that there is some risk in O.M. remaining in mother's care because mother might "relapse due to drug use" and mother failed to reunify with her seven other children. Mother informed the social worker during their interview on July 2, 2008, that she had been in an inpatient drug abuse treatment program from January to April 2007, and admitted that, although she had "graduated" from that program, she relapsed in October 2007, by ingesting cocaine.

As noted, we only review the juvenile court's order to determine whether or not it is supported by substantial evidence. The order here is supported by the evidence we discuss above, and that evidence is sufficient to be deemed substantial.

DISPOSITION

The order is affirmed.

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MOSK, J.

We concur:

TURNER, P. J.

ARMSTRONG, J.